

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRISKIT, INC.,

No. C 03-5085 WWS (MEJ)

Plaintiff,

**ORDER REGARDING JULY 29, 2005,  
DISCOVERY DISPUTE AND SIX LETTER  
BRIEFS DATED SEPTEMBER 29, 2005.**

vs.

REALNETWORKS, INC., and  
LISTEN.COM.,

Defendants.

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Before the Court is parties' joint discovery dispute letter dated July 29, 2005, and six letter briefs dated September 29, 2005. The parties' disputes are numerous and voluminous. The Court shall address each issue below.

**I. SOURCE CODE PRODUCTION AND FINALIZED INFRINGEMENT CONTENTIONS**

1. All parties are ORDERED to meet and confer in person with all the parties' experts present by Friday, October 14, 2005.
2. Plaintiffs' expert shall request the source code that is necessary to the claims in the instant suit.
3. Defendants shall produce to Plaintiff's expert the source code requested.
4. Plaintiffs' expert shall submit to the Court a detailed declaration with certification under penalty of perjury explaining why the specific source code requested is pertinent to the suit.
5. Any party acting in "bad faith" shall be sanctioned by the Court.
6. Plaintiff shall submit to the Court its finalized infringement contentions within 5 days from the date of the meet and confer.

**II. DISCOVERY RELATED TO CONTENT PROVIDERS**

1. The Court hereby ORDERS Defendants to produce the documents and answer the interrogatories pertaining to the third-party content providers.
2. The Defendants shall comply with this ORDER no later than October 7, 2005.

**III. DISCOVERY RELATED TO DEFENDANTS' REVENUE**

1. The Court hereby ORDERS Defendants to produce *all* financial documents in response to Plaintiff's discovery requests.
2. Defendants shall certify that a document search was performed, and all relevant documents produced, accordingly.
3. The Defendants shall comply with this ORDER no later than October 7, 2005.

**IV. DISCOVERY RELATED TO JEFF MORGEN**

1. Plaintiff is hereby ORDERED to comply with Defendants' request for production of documents following Jeff Morgen's deposition.
2. Plaintiff is ORDERED to produce Jeff Morgen's laptop
3. Plaintiff is ORDERED to produce the original files for the CD produced on August 4, 2005. If the original files are no longer in existence, Plaintiff shall certify that a document search was performed, and all relevant documents produced, accordingly.
4. Plaintiff is ORDERED to produce documents in native electronic format. Plaintiff shall certify that a document search was performed, and all relevant documents produced, accordingly.
5. Plaintiff is ORDERED to produce the attachment to "AE2460." If the attachment is no longer in existence, Plaintiff shall certify that a document search was performed, and all relevant documents produced, accordingly.
6. Plaintiff shall comply with this ORDER no later than October 7, 2005.

**V. DISCOVERY RELATED TO PRE FEBRUARY 2000**

1. Plaintiff is hereby ORDERED to comply with Defendants' production request related to the pre-February 2000 time frame.
2. Plaintiff shall certify that a document search was performed, and all relevant documents produced, accordingly.

3. Plaintiff shall comply with this ORDER no later than October 7, 2005.

**VI. DISCOVERY RELATED TO REAL'S SECOND SET OF DOCUMENT REQUESTS**

1. Plaintiff is ORDERED to supplement its responses to Real's Second Set of Document Requests no. 63, 65, 67, and 68.

2. Plaintiff shall comply with this ORDER no later than October 7, 2005.

**VII. DISCOVERY RELATED TO REAL'S SUPPLEMENTAL RESPONSES TO REQUESTS FOR ADMISSION**

1. Plaintiff is hereby ORDERED to supplement its responses to the RFAs no later than October 14, 2005.

2. Plaintiff is hereby ordered to comply with Defendant's request for Prior Art. Specifically, Plaintiff is to produce *any* and *all* Prior Art "as any art that predates January 24, 2000."

3. The Parties are hereby ORDERED to meet and confer on the following issues:

a) The requests for admissions that deal with the term "media."

b) The dispute relating to the "infringing functionality" term.

4. The Parties shall meet and confer with respect to the items listed in Section VII, Subpart 3 (a) and (b) of this ORDER no later than October 14, 2005.

**IT IS SO ORDERED.**

Dated: October 6, 2005

  
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MARIA-ELENA JAMES  
United States Magistrate Judge